IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 28112 of 2006(V)

PETITIONER:

K.SASIDHARAN, S/O.KUNJIRAMAN,
SUDHALAYAM, U.D.CLERK,
KANNUR MUNICIPALITY, KANNUR.

BY ADV. SRI.P.P.JACOB
SRI.B.MANIMOHAN

RESPONDENTS:

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1. KANNUR MUNICIPALITY,
KANNUR,
REP. BY ITS SECRETARY.

2. DIRECTOR OF URBAN AFFAIRS MUNICIPAL
COMMON SERVICE, THIRUVANANTHAPURAM.

3. THE SECRETARY TO GOVERNMENT,
LOCAL ADMINISTRATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

4. OUSEPH N.P., U.D.CLERK,
KANNUR MUNICIPALITY, KANNUR.

R1 & 2 BY GOVT PLEADER SHRI.P.NANDAKUMAR.
R3 BY ADV. SRI.K.K.CHANDRAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

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WP(C).No.28112 OF 2006-V.

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Dated this the 30th day of March, 2007.

J U D G M E N T

The petitioner is an Upper Division Clerk in the Municipal service. While working as such in Kannur Municipality, the 2nd respondent issued a transfer order whereby the petitioner was transferred to the office of the Municipality, Thaliparamba and the 4th respondent to the office of the Municipality, Kannur. WP(C). No.19318/2006 filed by the petitioner was disposed of by this Court directing the 3rd respondent to consider the appeal petition filed by the petitioner against the order of transfer. The operative part of the judgment in WP(C).No.19318/2006 reads:

> "(i) The third respondent shall take up for consideration Ext.P5 appeal filed by the petitioner and pass orders thereon within three weeks on production of a copy of the judgment. (ii) Contention urged by the

> petitioner that he is a physically handicapped person and that his wife has suffered injuries in a road accident and therefore in need of his assistance shall also be considered along with the interest of the administration."

The Government issued Ext.P7 order dated 2-12-2006 rejecting the request of the petitioner. The reasons for rejection have been stated in para.2 of Ext.P7 Government order. The same inter-alia says, "In the appeal petition he has stated that the Thaliparamba Municipal Office is one kilometer away from the bus stand and his house is just half kilometer from the bus stand. Therefore, it cannot be said that the transfer is inconvenient to the petitioner even though he is physically handicapped." The order further says: "the physically handicapped hands are provided with special conveyance allowance and the Director of Urban Affairs has reported that it was on administrative convenience and on public interest that he has been transferred to Thaliparamba Municipality." Para.2 of Ext.P7 shows that the Government was under the impression that the

transfer was to the native place of the petitioner. It was hence observed the transfer was a boon. The order goes to the extend of making the following remarks. "It is quite absurd that a transfer near to own home is questioned in Court. There is no Government order that a physically handicapped person should not be posted either near to his home or home town. If there is any such order he should not be posted near by his house or his home town. Therefore his intention is not clear and is malafide." It has been found that the transfer order issued by the Director of Urban Affairs is not illegal or contrary to the norms as alleged by the writ petitioner and that the reasons stated in Ext.P5 are not genuine and devoid of merit.

2. The petitioner has filed an affidavit sworn to the effect that he is not a resident of Thaliparamba. He asserts that he has absolutely no interest in Thaliparamba. According to the statement sworn to by him, he is a permanent resident of Kannur and his wife house is also at Kannur. Counsel for the petitioner

submits that the 3rd respondent has misread the statement made by the respondent in Ext.P5 and wrongly felt that the distance mentioned in the appeal petition was with reference to his alleged residence at Thaliparamba and the Municipal office at Thaliparamba. In the light of the specific contentions and averments made in the affidavit sworn to by the petitioner, the Government Pleader was directed to ascertain whether the facts stated by the petitioner in his affidavit filed before this Court are correct. On enquiry conducted by the concerned respondent, the Government Pleader, on instructions, submits that the petitioner is a resident of Kannur and his wife's house is at Chovva in Kannur district. It is, therefore, evident that Ext.P7 impugned in this petition happened to be passed on a misunderstanding of the true state of affairs and actual facts. It is, therefore, necessary that Ext.P7 shall be reconsidered by the 3rd respondent and fresh orders passed taking into account the correct facts and the difficulties experienced by the

petitioner, who admittedly, is a physically handicapped person.

3. Ext.P7 is set aside. Fresh orders shall be passed as directed above, within three weeks from the date of receipt of a copy of this judgment. The petitioner shall produce a copy of this judgment along with a copy of the writ petition together with the affidavit filed by him before the 3rd respondent, for information and necessary action.

The Writ petition is disposed of as above.

K.K.DENESAN, JUDGE.

kvs/-